

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 JOSEPH C. SISNEROS,) Civil No. 14cv891 GPC(RBB)
12 Plaintiff,)
13 v.) **ORDER DENYING PLAINTIFF'S**
14 SERGEANT BROWN, et al.,) **MOTION TO COMPEL DISCOVERY**
15 Defendants.) **[ECF NO. 27]**
16)

17 Plaintiff Joseph Sisneros, a state prisoner proceeding pro se,
18 filed this civil rights action pursuant to 42 U.S.C. § 1983,
19 alleging that prison officials acted with deliberate indifference
20 to his safety in violation of the Eighth Amendment when they placed
21 him in a cell with another inmate, Jesus Gomez, who viciously
22 attacked Plaintiff. (Compl. 3, ECF No. 1.) Defendants Brown and
23 Mendez filed a pre-answer motion for summary judgment for failure
24 to exhaust administrative remedies pursuant to Federal Rule of
25 Civil Procedure 56 and Albino v. Baca, 747 F.3d 1162 (9th Cir.
26 2014) (en banc) [ECF No. 9]. Defendants Davis and Krittman filed a
27 motion to dismiss [ECF No. 10]. Plaintiff has opposed both motions
28 [ECF Nos. 14, 18, 20, 22, 29], and Defendants filed a combined

1 reply [ECF No. 16]. The Court has not yet issued a ruling on
2 Defendants' motions.

3 On April 8, 2015, the Court denied Plaintiff's Motion to
4 Compel Discovery [ECF No. 24], explaining that Plaintiff's request
5 was premature under the Ninth Circuit case of Albino v. Baca, 747
6 F.3d at 1170. (Order Denying Pl.'s Mot. Compel Discovery 2, ECF
7 No. 25.) The Court explained that the discovery request was
8 unrelated to the issue of administrative exhaustion. (Id.)

9 The Court has received another document from Plaintiff
10 entitled "Motion to Compel Discovery," which was filed nunc pro
11 tunc to April 13, 2015 [ECF No. 27]. In this Motion, Sisneros
12 again seeks information that goes to the merits of his claim, such
13 as his alleged attacker's medical and housing history. (Pl.'s Mot.
14 Compel Discovery 1-2, ECF No. 27.) Because the Court has not yet
15 decided the issue of administrative exhaustion, discovery related
16 to the merits of the suit is not appropriate at this time. Albino,
17 747 F.3d at 1170. Thus, for the same reasons stated in the Court's
18 April 8, 2015 Order, Plaintiff's Motion to Compel Discovery [ECF
19 No. 27] is DENIED.

20 **IT IS SO ORDERED.**

21 Dated: May 11, 2015



22 Ruben B. Brooks
23 United States Magistrate Judge

24 cc: Judge Curiel
25 All Parties of Record

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